



Resolution No. 04-2006-123

**RESOLUTION OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION**

**(Authorizing a Limited Waiver of Sovereign Immunity for the Purposes of Agreements
with the State of Arizona)**

WHEREAS, pursuant to Section 1(a) of the Constitution of the White Mountain Apache Tribe, *inter alia*, the Tribal Council has the authority to represent the Tribe and act in all matters that concern the welfare of the Tribe; and

WHEREAS, the State of Arizona does provide services and funds necessary to the Tribe through contractual agreements; and

WHEREAS, the State of Arizona has begun to require that any and all claims, disputes and controversies relating to its agreements be submitted to binding arbitration pursuant to A.R.S. § 12-1501 *et seq.*; and

WHEREAS, a provision for arbitration expressed in a written contract has been found by the U.S. Supreme Court to be a waiver of a Tribe's sovereign immunity from suit, *C.L. Enterprise v Citizen Band Pottawatomie Indian Tribe*, 532 U.S.411(2001); and

WHEREAS, the Tribe's Legal Department, through its negotiations with attorneys for the State of Arizona, has found that the State of Arizona will not submit to the jurisdiction or laws of the White Mountain Apache Tribe, or accept the Tribe's sovereign immunity from suit; and

WHEREAS, the Tribe may provide a limited waiver of sovereign immunity from suit for the purposes of binding arbitration if and only if the following conditions exist:

- A dispute between the State of Arizona and the White Mountain Apache Tribe arises directly from the Agreement between them for the purposes expressed therein.
- The claim alleges a breach by the Tribe of one or more specific obligations or duties which the Tribe expressly assumes under the terms of the Agreement.
- The Claim seeks either (1) specific performance by the Tribe; (2) payment of all amounts due under the Agreement and reasonable costs the State incurs in collection of such amounts, or (3) the foreclosure of collateral secured under the Agreement, if any.
- The scope of arbitration is solely limited to breach of contract actions brought pursuant to the Agreement referenced herein for the benefit of the State of Arizona only, or an Assignee of a valid assignment of the State of Arizona's interest in the Agreement, if any.

Resolution No. 04-2006-123

- The Tribe does not agree to any arbitration by persons or parties or their assignees which are not a party to the Agreement nor to any arbitration proceeding or other proceeding based on alleged tortious conduct, or for the imposition of incidental, consequential, exemplary or punitive damages or lost profits.
- Any claim against which arbitration may be demanded must be made in writing to the Tribe by the State of Arizona and the Tribe shall have thirty (30) days to act on such claim before arbitration proceedings may be instituted; and

WHEREAS, the Tribal Council, after consideration, finds that agreements with the State of Arizona remains in the best interests of the White Mountain Apache Tribe for the funds and services provided there under, and that a limited waiver of sovereign immunity for the purposes of enforcement of arbitration provisions therein are acceptable according to the terms described above.

NOW THEREFORE BE IT RESOLVED by the White Mountain Apache Tribal Council that:


1. Any and all agreements with the State of Arizona for the purposes of providing funds or services to the Tribe are hereby approved.
2. As part of the approval of said Agreements, the Council hereby grants a limited waiver of sovereign immunity for the purpose of effecting dispute resolution there under in the form of binding arbitration if, and only if, the following conditions exist within the Agreement:
 - A dispute between the State of Arizona and the White Mountain Apache Tribe arises directly from the Agreement between them for the purposes expressed therein.
 - The claim alleges a breach by the Tribe or one or more specific obligations or duties which the Tribe expressly assumes under the terms of the Agreement.
 - The claim seeks either (1) specific performance by the Tribe; (2) payment of all amounts due under the Agreement and reasonable costs the State incurs in collection of such amounts, or (3) the foreclosure of collateral secured under the Agreement, if any.
 - The scope of arbitration is solely limited to breach of contract actions brought pursuant to the Agreement referenced herein for the benefit of the State of Arizona only, or an Assignee of a valid assignment of the State of Arizona's interest in the Agreement, if any.
 - The Tribe does not agree to any arbitration by persons or parties or their assignees which are not a party to the Agreement nor to any arbitration proceeding or other proceeding based on alleged tortious conduct, or for the imposition of incidental, consequential, exemplary or punitive damages or lost profits.
 - Any claim against which arbitration may be demanded must be made in writing to the Tribe by the State of Arizona and the Tribe shall have thirty (30) days to act on such claim before arbitration proceedings may be instituted.

Resolution No. 04-2006-123

3. The Chairman, or in his absence, the Vice-Chairman, is hereby authorized to negotiate and execute agreements with the State of Arizona of every description, not inconsistent with Federal law or the Constitution of the White Mountain Apache Tribe, subject to review by the Tribe's Legal Department.

The foregoing resolution was on April 25, 2006, duly adopted by a vote of FIVE for and THREE against by the Tribal Council of the White Mountain Apache Tribe, pursuant to the authority vested in it by Article IV, Section 1 (a), (b), (j), (g), (i), (j), (k), (s), (t) and (u) of the Constitution of the Tribe, ratified by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).


Chairman of the Tribal Council **ACTING**


Secretary of the Tribal Council